

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

SHAWN K. ODNEAL §  
VS. § CIVIL ACTION NO. 1:06-CV-145  
DIRECTOR, TDCJ-CID §

**MEMORANDUM ORDER OVERRULING PETITIONER'S OBJECTIONS AND ADOPTING  
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Petitioner Shawn K. Odneal, a prisoner confined at the McConnell Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The court ordered that this matter be referred to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends dismissing the petition as barred by the statute of limitations.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Petitioner filed objections to the magistrate judge's Report and Recommendation.

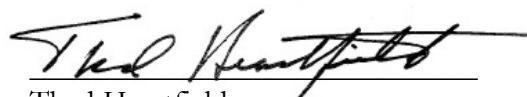
The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). Petitioner contends that he should be granted equitable tolling because his original appellate attorney did not notify him of the outcome of the appeal until after the time for filing a petition for discretionary review had passed. Petitioner's

pleadings show that his conviction became final on February 23, 2001, but he did not seek leave to file an out-of-time petition for discretionary review until December 15, 2003. Petitioner has offered no explanation for this delay. Due diligence requires that petitioner inquire into the status of his appeal and promptly seek relief when he discovers that a ruling has been issued. Because petitioner did not exercise due diligence, equitable tolling is not warranted. Petitioner also contends that he is entitled to equitable tolling because the attorney who filed his petition for discretionary review told him that he had one year to file a federal habeas petition after his petition for discretionary review was refused. Even if petitioner was granted equitable tolling for this period of time, his federal petition is untimely because the limitations period expired before the petition for discretionary review was filed. Therefore, after careful consideration, the court concludes the objections are without merit.

**ORDER**

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

**SIGNED** this the 3 day of May, 2006.



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Thad Heartfield  
United States District Judge